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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/720,462

11/24/2003

Thomas J. Boyd

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EXAMINER

ROBERTS, LEZAH

ART UNIT

PAPER NUMBER

1612

MAIL DATE

DELIVERY MODE

11/13/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/720,462	<b>Applicant(s)</b> BOYD ET AL.	
	<b>Examiner</b> LEZAH W. ROBERTS	<b>Art Unit</b> 1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 14, 16-22 and 24-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14, 16-22 and 24-55 is/are rejected.
- 7) ☒ Claim(s) 29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>04 Aug 2008</u>   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

This Office Action is in response to the Amendment filed July 29, 2008. All previous rejections have been withdrawn unless stated below.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action. This action is made NON-FINAL.

### ***Claims***

#### **Claim Objections**

Claim 29 is objected to because of the following informalities: the claim recites "the film flake" in the second line. The claim should recite "the flake". Appropriate correction is required.

#### **Claim Rejections - 35 USC § 112 – Indefiniteness (New Rejections)**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17 and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 17 and 40 recite the limitation "substantially clear". The term "substantially" in claims 17 and 40 is a relative term which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would

not be reasonably apprised of the scope of the invention. This renders the otherwise definite term "clear" as indefinite because it cannot be ascertained what degree of clarity is encompassed by "substantially clear".

**Claim Rejections - 35 USC § 103 – Obviousness (Previous Rejections)**

1) Claims 16-19, 24, 28-32, 34-37, 40-42, 47, 52 and 55 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hauschild et al. (US 4,440,877).

**Applicant's Arguments**

Applicant argues the speckles of the reference are different from the flakes of the instant claims insofar as comprise a water insoluble polymer such as ethyl cellulose along with a water soluble polymer. The instantly claimed flakes comprise water soluble polymers and no ethyl cellulose is required. The reference also does not suggest producing the agglomerate speckles of the reference as flakes. The reference teaches away from the instant claims because no one would expect to produce a stable flake in the absence of ethyl cellulose. This argument is not persuasive.

**Examiner's Response**

The claims use open language "comprising" which indicates other components, such as insoluble polymers, may also be included in the flakes. The claims do not recite functional limitations that would exclude ethyl cellulose from being present. The reference does not teach away from the compositions because as stated above, the

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claims do not indicate that ethyl cellulose is excluded from the recited flakes. In regards to the shape, as stated in the previous office action mailed April 29, 2008, "Matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. The shape is a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed particle. See MPEP 2144.04". Applicant has not provided any support to show why changing the shape would affect the function of the speckles of the reference of the flakes of the instant claims.

2) Claims 14, 15, 20-22, 25-27, 38, 39 and 43-54 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hauschild et al. (US 4,440,877) in view of Rajaiah et al. (US 2002/0187108). The rejection is maintained. Claim 15 is cancelled.

#### Applicant's Arguments

Applicant argues Hauschild et al. does not teach or suggest all of the limitation of independent claim 37. Therefore the instant claims are not obvious over Hauschild et al. in view of Rajaiah et al.

#### Examiner's Response

Hauschild et al. suggest the composition of independent claims 16 and 37 and therefore the rejection is maintained.

Claims 14, 16-22 and 24-55 are rejected.

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEZAH W. ROBERTS whose telephone number is (571)272-1071. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick F. Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lezah W Roberts/

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Examiner, Art Unit 1612

/Frederick Krass/

Supervisory Patent Examiner, Art Unit 1612